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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 DONNA SCHULTZ,

11 Plaintiff,

12 v.

13 OLYMPIC MEDICAL CENTER, a  
14 Washington Public Hospital District, and its  
15 BOARD MEMBERS, MIKE GLENN, a  
16 married person, in his capacity as Administrator  
17 of Olympic Medical Center, LAURA JOSHEL,  
18 in her capacity as Employee Relations  
Coordinator, STEVE HASELWANDER, in his  
capacity as manager of the Olympic Medical  
Sleep Center, UNITED FOOD AND  
COMMERCIAL WORKERS LOCAL 21, a  
labor organization,,  
19

20 Defendants.

Case No. C07-5377 FDB

ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION FOR RECONSIDERATION

21 This matter comes before the Court on Defendants' motion for reconsideration of this  
22 Court's September 30, 2008 Order granting in part and denying in part Defendants' motion for  
23 summary judgment. Defendants' assert that (1) the Court erroneously held that there was "no  
24 procedural bar" to Plaintiff's breach of collective bargaining agreement claim, and (2) the Court  
25 failed to rule on the motion to dismiss the WLAD claims against the individual defendants, Mike

1 Glenn and Laura Joshel. The Court, having reviewed the motion, denies reconsideration of the claim  
2 for breach of the collective bargaining agreement and grants reconsideration of the WLAD claims  
3 and dismisses the individual Defendants Mike Glenn and Laura Joshel from this cause of action.

#### 4 **Standards for Reconsideration**

5 Pursuant to Local Rules W.D. Wash. CR 7(h)(1), motions for reconsideration are disfavored,  
6 and will ordinarily be denied unless there is a showing of (a) manifest error in the prior ruling, or (b)  
7 facts or legal authority which could not have been brought to the attention of the court earlier,  
8 through reasonable diligence.

#### 9 **Breach of Collective Bargaining Agreement**

10 Defendant contends that Plaintiff failed to exhaust her collective bargaining agreement (CBA)  
11 because she failed to arbitrate her grievances. The Court disagrees.

12 Federal labor law mandates that employees seeking to sue for breach of a collective  
13 bargaining agreement must first exhaust the grievance/arbitration procedures set forth by the  
14 collective bargaining agreement. Republic Steel Corp. v. Maddox, 379 U.S. 650, 653 (1965). Since  
15 the employee's claim is based upon breach of the collective bargaining agreement, she is bound by  
16 terms of that agreement which govern the manner in which contractual rights may be enforced. Vaca  
17 v. Sipes, 386 U.S. 171, 184 (1967). For this reason, it is settled that the employee must at least  
18 attempt to exhaust exclusive grievance and arbitration procedures established by the bargaining  
19 agreement. Id.

20 It is undisputed that Plaintiff filed grievances concerning the denial of promotion and her  
21 termination. The Defendants claim, nonetheless, that Plaintiff failed to exhaust all available  
22 procedures because she did not proceed to arbitration. The governing CBA, however, provides that  
23 the **employee and/or the union representative shall present grievances**. The arbitration  
24 provisions provide that “[i]f the grievance is not settled on the basis of the foregoing procedures, **the**  
25 **Union may submit the issue in writing to arbitration ....**” This arbitration provision does not

1 authorize the employee to submit a grievance to arbitration, but places this authority solely with the  
2 Union. The Union is provided with discretion in that it “may” submit an unsettled grievance to  
3 arbitration. Here the Union declined to proceed to arbitration on behalf of Plaintiff. Plaintiff had no  
4 control over the Union’s exercise of discretion and was not entitled to proceed to arbitration without  
5 the Union’s assent. Plaintiff nonetheless exhausted (or at least attempted to exhaust) the exclusive  
6 grievance and arbitration procedures. Accordingly, Plaintiff is not required to establish that she was  
7 not fairly represented prior to commencing suit. See, Clayton v. International Union, 451 U.S. 679  
8 (1981).

9 Defendants’ motion for reconsideration of the claim of breach of the collective bargaining  
10 agreement is denied.

### 11 **WLAD and Individual Defendants**

12 Supervisors acting in the interest of an employer can be held individually liable for  
13 discriminatory acts against an employee. Supervisors are liable for discrimination prohibited by the  
14 WLAD when they affirmatively engage in discriminatory conduct. Brown v. Scott Paper Worldwide  
15 Co., 143 Wn.2d 349, 359-361 (2001). Plaintiff presented no evidence that Mike Glenn engaged in  
16 age discrimination against Plaintiff. The only evidence that Laura Joshel engaged in discriminatory  
17 conduct was in the nature of speculation. Mere allegation and speculation do not create a factual  
18 dispute for purposes of summary judgment. Nelson v. Pima Community College, 83 F.3d 1075,  
19 1081-82 (9<sup>th</sup> Cir. 1996). Conclusory, speculative testimony in affidavits and moving papers is  
20 insufficient to raise genuine issues of fact and defeat summary judgment. Soremekun v. Thrifty  
21 Payless, Inc., 509 F.3d 978, 984 (9<sup>th</sup> Cir. 2007). Accordingly, the individual Defendants Mike Glenn  
22 and Laura Joshel are entitled to summary judgment of dismissal of the WLAD claims.

### 23 **Conclusion**


24  
25 For the above stated reasons, it is hereby

1 ACCORDINGLY;

2 ORDERED:

3 Defendants' motion for reconsideration [Dkt. # 68] is **GRANTED IN PART AND**  
4 **DENIED IN PART.** The motion for reconsideration of the claim for breach of collective  
5 bargaining agreement is **DENIED.** The motion for reconsideration of the WLAD claims  
6 against the individual Defendants Mike Glenn and Laura Joshel is **GRANTED,** and the  
7 WLAD claims against these individual Defendants is **DIMISSED.**

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9 DATED this 14<sup>th</sup> day of October, 2008.

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14 FRANKLIN D. BURGESS  
15 UNITED STATES DISTRICT JUDGE  
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